IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 403 of 2001
Date of Decision: 23.8.2007

Maha Ram ...Appellant

Versus

Rakesh and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri J.S. Yadav, Advocate, for the appellant.

None for the respondents.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for declaration to the effect that the plaintiffs are owner in possession of the land as detailed in the head note of the plaint, was decreed.

It is the case of the plaintiffs that the land measuring 55 kanals 15 marlas was purchased from the income of the defendant i.e. the appellant and father of the plaintiffs i.e. Shri Bhagwan. Another land measuring 81 kanals 12 marlas was also purchased in the name of Basti Ram, father of the appellant and Shri Bhagwan during the lifetime of Basti Ram. It was agreed in the family settlement that the defendant will be owner in possession of the property measuring 81 kanals 12 marlas, whereas the plaintiffs would be owners qua the property measuring 55 kanals 15 marlas with rights appurtenant thereto. The defendant was to pay a sum of Rs.35,000/- to the plaintiffs as compensation

in lieu of the house built on the land measuring 81 kanals 12 marlas as well. The present suit was filed on 23.2.1991 to seek recognition of the family settlement. The defendant-appellant filed an admission written statement on 25.3.1991, but thereafter sought to contest the suit on merits, denying the settlement arrived at as asserted by the plaintiffs.

Both the Courts have returned a concurrent finding of fact that in fact, there was a family settlement between the parties on 21.2.1991. On the basis of such family settlement, the suit was filed on 23.2.1991 in which initially defendants filed an admission written statement and then sought to wriggle out of the settlement. It was found that in terms of the settlement, the plaintiffs are entitled to the declaration prayed for.

The land measuring 55 kanals 15 marlas was purchased in the name of Maha Ram and Shri Bhagwan sons of Basti Ram, vide registered sale deed vide Exhibit D.1 dated 1.6.1967. The plaintiffs are sons of Shri Bhagwan. The land measuring 81 kanals 12 marlas was purchased in the name of Basti Ram. The parties have entered into settlement Exhibit P.1 on 21.2.1991. The said statement is proved from the testimony of PW1- Gajraj Singh; PW3-Gurdial Singh (Scribe) and PW5-Om Parkash. PW2-Suresh Kumar has also been examined, who has deposed that such settlement has been arrived at in his presence, though he is not one of the attesting witnesses. The appellant in his written statement has pleaded that sons of defendant Dinesh etc. paid a sum of Rs.35,000/- to Om Parkash, guardian of the plaintiffs, in compensation of the house built in the property measuring 81 kanals 12 marlas. PW1- Om Parkash has deposed that price of Rs.35,000/- in respect of three house built by Shri Bhagwan in the land of 81 kanals 12 marlas, was determined by the Panchayat. The plaintiffs have

got their appeal dismissed as withdrawn from the Court of learned Additional District Judge, Narnaul, against the order of the trial Court in a suit titled as “Kamla Devi v. Dinesh Kumar' on 18.4.1991 (Exhibit P.7). The plaintiffs have also got the suit dismissed as withdrawn on 29.4.1991 in respect of the land measuring 81 kanals 12 marlas. The challenge in the said suit was to the decree suffered by Basti Ram in favour of sons of defendant Maha Ram. It was, thus, found that the family settlement Exhibit P.1 was acted upon and is binding upon the defendant.

The primary argument raised by the learned counsel for the appellant is that the compromise (Exhibit P.1) was restricted to the criminal litigation between the parties and has no effect in respect of the land in dispute. A perusal of statement Exhibit P.1 does not show that it is restricted to the criminal cases. It has been stated that since the parties are members of the same family and that there is joint land in village, therefore, parties have decided to resolve their disputes through the settlement. Such settlement recites the land measuring 55 kanals 15 marlas, pumping set and electric connection. Reference is also made to the decree suffered in favour of sons of Maha Ram by Basti Ram. Thus, the contention raised by the appellant that such settlement is not in respect of the suit land, is not sustainable.

It is also contended that the family settlement (Exhibit P.1) requires registration as rights are being created for the first time in the said document. However, the said contention is misconceived. It is the categorical case of the plaintiff that the settlement was arrived at on 19.2.1991 in the village and Hans Raj Sarpanch, Suresh Kumar Sarpanch, Ram Kumar and several other persons, were present there. Thereafter on

21.2.1991, the parties came to the Court, where the compromise (Exhibit P.1) was written. Therefore, the family settlement, in these circumstances, does not create any right in favour of any of the parties by virtue of the document itself. Since the right is not being created for the first time by virtue of such family settlement, the same does not require registration.

Concurrent findings of fact recorded by the Courts below, are sought to be disputed in the second appeal by way of re-appreciation of evidence. I do not find that such findings suffer from any patent illegality or material illegality, which may give rise to any substantial question of law in the present appeal. Hence, the present appeal is dismissed.

23-08-2007 (HEMANT GUPTA)
ds JUDGE